

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the Matter of:)	
)	COMPLAINT NO. 01-001
)	for
National Auto Truck Dismantlers)	ADMINISTRATIVE
6275 Napa Vallejo Highway)	CIVIL LIABILITY
Napa, Napa County)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. National Auto Truck Dismantlers (hereinafter the Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Regional Board), may impose civil liability pursuant to Section 13385 of the California Water Code.
2. Unless waived, a hearing on this matter will be held before the Regional Board on June 20, 2001 in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. You or your representative(s) will have an opportunity to be heard and to contest the allegations in this complaint, and the imposition of civil liability by the Regional Board. An agenda showing the time set for the hearing will be mailed to you no less than ten days before the hearing date. You must submit any written evidence concerning this complaint to the Regional Board by June 6, 2001. Any written evidence submitted to the Regional Board after June 6, 2001 will not be included in the record.
3. At the hearing the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability

ALLEGATIONS

4. The following facts are the basis for the alleged violation in this matter:
 - a. The Discharger submitted a Notice of Intent (NOI) to obtain coverage under the State Water Resources Control Board's discharge permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The Discharger's Waste Discharge ID No. is 228S014496.

- b. The General Permit requires the Discharger to submit an annual report documenting sampling and analyses, observations, and an annual comprehensive site compliance evaluation, by July 1 of each year.
- c. Prior to the July 1 deadline, the State Water Resources Control Board mailed a blank form for the annual report to the Discharger.
- d. The Discharger is alleged to have violated its waste discharge requirements by failing to submit its 1999/2000 annual report by July 1, 2000.
- e. On August 15, 2000, the Acting Executive Officer issued a Notice of Noncompliance (NNC) letter to the Discharger. The Discharger was notified of its obligation to submit an annual report and to comply with the General Permit. The Discharger was required to respond by September 15, 2000.
- f. On September 26, 2000, the Acting Executive Officer issued a second NNC letter to the Discharger. This letter informed the Discharger that it was in violation of the General Permit and that the Executive Officer would recommend enforcement actions if an annual report was not submitted. The Discharger was required to respond by October 26, 2000.
- g. As of the date of this Complaint, the Discharger has failed to submit its 1999-2000 annual report. The Discharger has been in violation of the General Permit for a total of 303 days (July 2, 2000 through April 30, 2001). The total maximum liability that may be assessed for this violation is 3,030,000.

PROPOSED CIVIL LIABILITY

- 5. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.
- 6. Under Section 13385(c)(2) of the California Water Code, the Regional Board can impose a maximum civil liability of \$10,000 per day of violation. Under Section 13399.33(c), the minimum civil liability for failure to submit an annual report is \$1,000. This Complaint addresses violations for the 303-day period from July 2, 2000 through April 30, 2001.
- 7. The Executive Officer of the Regional Board proposes that an administrative civil liability be imposed in the amount of \$5,000. Of this amount \$2,400 is for recovery of staff costs. The Executive Officer will not consider any request to reduce the amount of proposed liability based on the Discharger's alleged inability to pay unless the Discharger submits adequate proof of financial hardship, e.g., two years of income tax returns or an audited financial statement.

8. Further failure to comply with the General Permit or amendments thereof beyond the date of this Complaint may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement action(s), including referral to the Attorney General.

Loretta K. Barsamian
Loretta K. Barsamian
Executive Officer

May 21, 2001
DATE

Please contact Rico Duazo at (510) 622-2340 or Dorothy Dickey, Regional Board Counsel, at (510) 622-2490 if you have any questions.

WAIVER OF HEARING

You may waive the right to a hearing. If you wish to waive the hearing, an authorized person must check and sign the waiver and return it to the Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay St., Suite 1400, Oakland, CA, 94612. Payment of the administrative civil liability is due within thirty (30) days after the waiver is signed.

WAIVER OF HEARING

FOR

COMPLAINT NO. 01-001

**National Auto Truck Dismantlers
6275 Napa Vallejo Highway
Napa, Napa County**

- [] By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in the above Complaint No. 01-001 and to remit payment for the civil liability imposed. I understand that I am giving up my right to argue against the allegations made by the Executive Officer in the complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to remit payment for the civil liability imposed within 30 days after the waiver is signed.

Signature: _____

Name: _____

Position: _____

Company: _____

Date: _____

REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF REPORT

TO: Loretta K Barsamian
Executive Officer

DATE: April 30, 2001

FROM: Rico Duazo, Assoc. WRCE
NPDES Permits Division

FILE NO: 2198.23

SUBJECT: ACLs for failure to submit a 99/00 Annual report as required by the State Board's General NPDES Permit for Discharges of Stormwater Associated with Industrial Activity (General Permit)

The following sites (hereinafter the Dischargers) have been notified of their responsibility to submit a 99/00 annual report as required by the General Permit:

National Auto & Truck Dismantler	C & C Enterprises	C & C Enterprises
6275 Napa Vallejo Highway	7910 Enterprise Drive	8240 Enterprise Drive
Napa	Newark	Newark
Napa County	Alameda County	Alameda County
WDID No. 2028S014496	WDID No. 2001S009259	WDID No. 2001S009362

To date the Dischargers have not submitted an annual report and continue to be in violation of the General Permit.

BACKGROUND

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the General Permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$250 or \$500, dependent on site location), with the State Water Resources Control Board.

Sites that file an NOI are required by the General Permit to develop a site-specific Stormwater Pollution Prevention Plan (SWPPP) and a Monitoring Program. The SWPPP identifies sources of pollution that might affect stormwater discharges from the site and describes best management practices (BMPs) that can be implemented to reduce or eliminate pollutants from being entering stormwater. The Monitoring Program includes visual observations, and collecting and analyzing samples of stormwater discharges. The Monitoring program is used to aid in the implementation of the SWPPP and to measure the effectiveness of BMPs in reducing or preventing stormwater pollution.

As of April 30, 2001, over 1,500 industrial facilities within Region 2's jurisdiction are covered under the General Permit. Each of the Dischargers owning the above sites has filed a NOI with

the State Water Resources Control Board for coverage under the General Permit. Section B. 14 of the General Permit requires all dischargers to submit an annual report for their sites by July 1 of each year to the Executive Officer of the Regional Board. The report covers the previous one-year period (July 1-June 30).

For the 1999-2000 reporting period, the annual reports were due on July 1, 2000. In October 1999, the State Water Resources Control Board mailed out blank annual report forms to each discharger with a reminder to submit the report by the July 1, 2000, deadline. The annual report is the only report required to be submitted under the General Permit.

On August 15, 2000, Notice of Noncompliance letters (NNC) were issued to 476 dischargers in Region 2 that had not yet submitted their annual reports. A second NNC was issued on September 26, 2000, to 105 of the original 476 dischargers that still had not submitted the annual report in response to the first NNC. The second NNCs included the website address and contact names for obtaining a blank copy of the annual report form, and required that the overdue annual reports be submitted by October 26, 2000.

The September 26, 2000, NNC also indicated that there is a mandatory penalty for non-submittal of annual reports. Pursuant to California Water Code Section 13399.33 (c), the Regional Board must impose a minimum penalty of \$1,000 if an annual report is not submitted.

Board staff subsequently contacted 53 dischargers by telephone who had received both NNCs and still had not submitted the annual reports, and reminded them about the October 26, 2000 deadline. With the exception of the sites at issue in this ACL, Board staff were able to make arrangements to have the annual reports submitted at a later date or were able to determine that an annual report was not needed (e.g., site had no discharges, site was no longer in operation, etc.).

The three sites listed above were the only ones who did not respond to our NNC letters or telephone calls. The sites are still in operation, have an active NOI, and despite our repeated attempts to secure report submittals, still have not (as of April 30) submitted their required reports.

LEGAL BASIS FOR ACTION

The Dischargers have violated the terms of the General Permit, as described below. Therefore, the Board may impose administrative civil liability pursuant to Section 13385(a)(5). Section 13385(e) requires a discussion of the following factors that have a bearing on the amount of liability:

1. NATURE, CIRCUMSTANCES, EXTENT AND GRAVITY OF THE VIOLATIONS:

The Dischargers were given a number of warnings, including two Notices of Noncompliance letters and telephone messages. Also, the Dischargers, by submitting an

NOI, indicated their intent to comply with all requirements of the General Permit, including the requirement to submit an annual report.

The annual reports contain self-monitoring and inspection reports. Without these reports, staff has no way of determining the quality of storm water runoff from these sites or whether the dischargers have implemented appropriate control measures at their sites. Staff can only assume that the facilities have been in violation of the General Permit all year.

2. ABILITY TO PAY THE PROPOSED ASSESSMENT:

The Dischargers have not demonstrated an inability to pay the proposed amount..

3. PRIOR HISTORY OF VIOLATIONS:

National Auto & Truck Dismantler also did not submit its 98/99 annual report. C & C Enterprises has no history of failing to submit its annual reports.

4. DEGREE OF CULPABILITY:

The storm water regulations are applicable to all industrial sites on a nationwide basis. All dischargers, including those owning the sites listed above, are responsible for compliance with the Clean Water Act. The sites listed above are fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

5. ECONOMIC BENEFIT OR SAVINGS, IF ANY, RESULTING FROM THE VIOLATIONS:

The Dischargers have realized cost savings by failure to perform required sampling and analyses, and failure to implement the SWPPP. Assuming an average-sized site, the minimum economic savings for not submitting an annual report is estimated as follows:

Annual Costs
\$1,000 (Sample/Analysis Costs and Annual Report Preparation)
<u>\$1,000 (Annual SWPPP Implementation and Maintenance)</u>
Total = \$2,000

6. OTHER MATTERS THAT JUSTICE MAY REQUIRE

Section 13399.31 of the Water Code requires that dischargers receive two notices before an ACL complaint is issued. Board staff has fulfilled this requirement with the August 15, 2000, and September 26, 2000, NNCs. Section 13399.33 (c) of the Water Code provides that the Regional Board shall impose a minimum penalty of \$1,000 for any person who

fails to submit an annual report in accordance with Section 13399.31 of the Water Code. Each of the Dischargers is subject to this \$1,000 minimum penalty.

Staff time to prepare a Complaint and supporting information is estimated to be 24 hours. Based on an average cost to the State of \$100 per hour, the total cost is \$2,400 for each of the sites.

CONCLUSIONS

Section 13385(c) of the Water Code allows the Regional Board to administer civil liability in an amount not to exceed \$10,000 per day of violation. While these Dischargers' days of violations continue to increase, calculations based on days of violations to date are as follows:

July 2, 2000 to April 30, 2001 = 303 violation days

(303 violation days) x (\$10,000/day) = \$3,030,000

If the matter is referred to the Attorney General, the maximum liability is \$25,000 per violation day. I recommend that civil liability be imposed administratively rather than referred to the Attorney General because:

1. The proposed penalty is sufficient to encourage future compliance with the General Permit and provides for limited compensation for unknown damage to waters of the United States;
2. Additional expenditure for staff time to seek greater penalties, such as referral to the Attorney General, is unwarranted at this time; and
3. The means to impose reasonable penalties are provided within the administrative liability provisions of the Water Code.

RECOMMENDATIONS

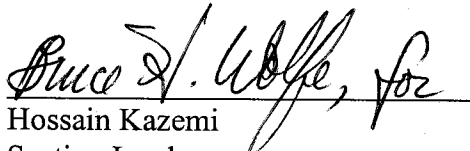
I recommend that the Board impose administrative civil liability (ACL) of \$5,000 (including \$2,400 for staff costs) for each of the C&C Enterprises sites. I recommend that the Board impose an ACL of \$7,000 (including \$2,400 for staff costs) on National Auto & Truck Dismantler, because this is the second year in a row that it has failed to submit its required annual report. Considerations include:

1. The recommended liability is consistent with previous ACLs adopted by other Regional Boards (Region 5 and Region 8).
2. The amount is low enough such that the Dischargers should be able to pay, yet high enough such that they have an immediate incentive to comply with the General Permit.

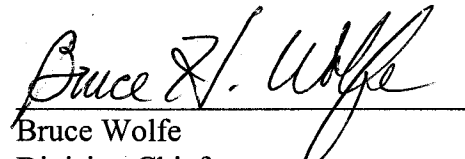
3. The amount is sufficiently large enough to impress upon other dischargers that annual reports must be completed and submitted on time.

I have prepared draft complaints that propose ACL of \$5,000 for each C&C Enterprise site and ACL of \$7,000 for National Auto & Truck Dismantler.

Concur:


Hossain Kazemi
Section Leader

Concur:


Bruce Wolfe
Division Chief

Attachment 2

Subject: SUPPLEMENTAL ENVIRONMENTAL PROJECTS AS COMPONENTS OF ADMINISTRATIVE CIVIL LIABILITIES

The San Francisco Bay Regional Water Quality Control Board (Regional Board) accepts and encourages Supplemental Environmental Projects (SEP's) in lieu of a portion of the Administrative Civil Liability imposed on dischargers in the Bay Area. This letter is to inform you of the types of projects the Board will accept and the procedures for proposing and implementing a project.

The overall goals of the Regional Board's program for SEP's: 1) monetary penalties should be directed to projects within the Region; 2) projects should benefit the environment; 3) projects should focus on education, outreach and/or restoration. The Regional Board identifies four categories of SEP's that may receive funding: pollution prevention, pollution reduction, environmental restoration, and environmental education. The project should not be used to mitigate the damage caused directly by the original violation or to implement measures required to comply with permits or regulations, since this is the responsibility of the discharger regardless of any penalties involved.

The Regional Board does not select projects for SEP's; rather, it is the discharger's responsibility to propose the project (or projects) they would like to fund and then obtain approval from the Regional Board. However, the Regional Board can facilitate this process by maintaining a list of possible projects, which is made available to dischargers interested in pursuing the SEP option. Dischargers are not required to select a project from this list, however, and may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

In cases where an SEP is approved by the Regional Board, payment of a portion of the ACL will be suspended if the project is satisfactorily completed on schedule. The SEP can only be used to offset a portion of a proposed penalty; therefore the final ACL package will consist of a monetary penalty, reimbursement of staff costs, and a project. Note that the total penalty is not reduced by implementing a project; rather the method of payment is being modified in order to achieve a greater environmental benefit.

To improve tracking and overall performance of SEP, the Regional Board has set up a monitoring program. The San Francisco Estuary Project (SFEP) is available to oversee the SEP's. They serve as liaison between the Discharger, the Regional Board and the fund recipient and will monitor project implementation and expenses. SFEP staff will also maintain a current list of potential projects and can assist in the selection process. This coordination work is funded by allocation of 6% of the SEP to the San Francisco Estuary Project.

Questions regarding the San Francisco Bay Regional Water Quality Control Board's SEP program may be directed to Carol Thornton at the San Francisco Estuary Project, (510) 622-2419.



California Regional Water Quality Control Board

San Francisco Bay Region



Gray Davis
Governor

Internet Address: <http://www.swrcb.ca.gov>
1515 Clay Street, Suite 1400, Oakland, California 94612
Phone (510) 622-2300 or FAX (510) 622-2460

Winston H. Hickox
Secretary for
Environmental
Protection

Certified Mail No.70993220000146713884
Return Receipt Requested

Date: MAY 31 2001
File No: 2198.23 (RAD)

Mr. Ed Garcia
National Auto Truck Dismantler
6275 Napa Vallejo Highway
Napa, CA 94589

SUBJECT: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. 01-001
National Auto Truck Dismantler
6275 Napa Vallejo Highway
Napa, Napa County

Dear Mr. Garcia:

Enclosed is a Complaint for Administrative Civil Liability issued to National Auto & Truck Dismantler for the subject site. The Complaint alleges that National Auto & Truck Dismantler has violated its waste discharge requirements by failing to submit its 1999/2000 annual report by July 1, 2000, as required. The complaint proposes administrative civil liability of \$7,000.

A public hearing on this matter has been scheduled for the June 20, 2001, Regional Board Meeting in the Elihu M. Harris State Building, First Floor Auditorium, located at 1515 Clay Street, Oakland, California. The meeting agenda will be mailed to you prior to the hearing.

At this time, you have three options:

1. You can appear before the Board during the scheduled meeting to contest the Complaint; written comments are due by June 6, 2001. At that time, the Board may impose the Administrative Civil Liability in the amount proposed, for a different amount, decline to seek civil liability, or refer the case to the Attorney General.
2. You can waive the right to a hearing by signing the attached "Waiver of Hearing" form and submitting it to the Regional Board at 1515 Clay St. Suite 1400, Oakland, CA 94612, by June 6, 2001. By doing so, you agree to pay the liability within 60 days of this Complaint's issuance.

California Environmental Protection Agency

3. You may request that a portion of the assessment be suspended and an amount equal to the suspended amount be dedicated to a local Supplemental Environmental Project (SEP). If so, do not sign the waiver; instead state your intent in a letter addressed to me, no later than June 6, 2001. Attached is a description of the Regional Board's program for SEPs. Staff can assist you in identifying and developing an acceptable project.

Please contact Rico Duazo at (510) 622-2340 or Dorothy Dickey, Regional Board Counsel, at (510) 622-2490 if you have any questions.

Sincerely,

Loretta K. Barsamian
Loretta K. Barsamian
Executive Officer

Enclosures:

Complaint No. 01-001
Attachment 1 - Staff Report
Attachment 2 - SEP Information

cc: Regional Board
State Water Resources Control Board, Office of the Chief Counsel - Dorothy Dickey
State Water Resources Control Board, Division of Water Quality - Bruce Fujimoto
State Water Resources Control Board, Office of Statewide Consistency - Margie Young